

REMARKS

This application has been carefully reviewed in light of the Office Action dated October 9, 2007. Applicants have amended claims 1 and 11. Reconsideration and favorable action in this case are respectfully requested.

The Examiner has provisionally rejected claim 1-24 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims 1-21 of copending Ser. No. 10/618,859. Once claims are allowed, Applicants will address whether a terminal disclaimer should be filed.

The Examiner has rejected claims 1, 11, 23 and 24 under 35 U.S.C. §103(a) as being unpatentable over Martinek in view of U.S. Pat. No. 5652793 to Priem and further in view of FRC 2459 to Housley. Applicants have reviewed these references in detail and do not believe that they disclose or make obvious the invention as claimed.

The Examiner has rejected claims 2-10 and 12-22 under 35 U.S.C. §103(a) as being unpatentable over Martinek in view of U.S. Pat. No. 5652793 to Priem and further in view of FRC 2459 to Housley. Applicants have reviewed these references in detail and do not believe that they disclose or make obvious the invention as claimed.

With regard to the provisional double patenting rejection, Applicants note that the rejection is *provisional*. Neither case has been allowed, nor are there allowed claims in either case. In the interest of furthering the prosecution of both cases, it makes no sense to argue double patenting about claims in the respective applications which could both change prior to the next office action. As stated previously, at the time claims are allowed in one of the cases, it will be possible to determine whether a double patenting rejection is valid and, if so, a terminal disclaimer can be entered in the appropriate case. Deferring action on the double patenting rejection until prosecution has progressed to the point where the merits of the rejection can be thoughtfully addressed has been previously

done by Applicants' attorney in multiple cases without objection until the instant case. Since the rejection is *provisional*, Applicants believe that this response is completely in conformance with their obligations under 37 CFR §1.111(b).

With regard to the §103(a) rejection of the independent claims 1 and 11, the Examiner agrees with the Applicants' contention from the previous Amendment that Marinek fails to disclose a system that verifies a binding between the system program and the computing device. The Examiner has included the Priem reference to show this element of the claim.

The particular citation to the Priem reference is in the Background section of Priem. This section states:

To stop illegal use of software used on workstations, manufacturers have assigned unique numbers to each workstation and prepared a password for each physical piece of software authorized to be used on a particular workstation. When an authorized program is run on a workstation, the value of the password is tested against the workstation number by a software process within the application program, and if the values check; the machine operates. When the values do not check, something undesirable from the standpoint of the operator occurs.

Further, the paragraph continues:

This method of monitoring against unauthorized use has cut down the illegal use of software on workstations. However, it is not too difficult to modify the software of the application program so that it will run on a workstation even though the workstation is numbered incorrectly for the particular password. Typically, portions of the copied program which would invoke the check of password against machine number are simply removed from the program.

The solution proposed by Priem generates an "output value" from a plaintext number (in long term storage device 22) and a key value (in long term storage device 24)

and an application identifier. When the application is purchased, the output value is used to generate a password, which is returned to the buyer. When the buyer initiates the program, the password is compared with the output value in a compare circuit (30) to determine whether the program can be executed.

Both the teaching in the Background of Priem, and the embodiment of the invention in Priem, differ significantly from the claimed invention in the present application. In both cases, the *software* is not bound to the computing system; rather, an *identifier* for the software is bound to the computing system. As stated in the Background of Priem, the prior art protection can be easily overcome by modifying the software. Similarly, in the solution of Priem, the output value and password are generated from the application identifier. However, nothing in Priem prevents that application to be modified, so long as the application ID is valid.

Accordingly, the buyer of the program in Priem could modify values in *software* to change how the program operates. In the application discussed in Priem for personal computers, this may be acceptable; however, in many other applications such as those discussed in connection with the present invention, modifying the software could have significant repercussions to the manufacturer of the computing device. First, it could allow users to modify the system program to change the operation of the device which could adversely affect the reliability of the device. Second, users could modify the program to enable features for which the manufacturer requires compensation.

Claims 1 and 11 have been amended to more specifically describe the binding as being between the *contents* of the system program and the computing device. As neither Priem or Marinek teach this element, Applicants respectfully request allowance of independent claims 1 and 11 and dependent claims 2-10 and 12-24.

It should be noted that claim 11 was also amended to correct an antecedent basis problem for “system program”.

The Commissioner is hereby authorized to charge any fees or credit any overpayment, including extension fees, to Deposit Account No. 20-0668 of Texas Instruments Incorporated.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Alan W. Lintel, Applicants' Attorney at (972) 664-9595 so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

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